



January 18, 2006

HOUSE BILL No. 1016

DIGEST OF HB 1016 (Updated January 11, 2006 2:49 pm - DI 69)

Citations Affected: IC 35-33.

Synopsis: Pretrial fees. Authorizes a court to require a person charged with an offense who is placed on bail and supervised by a probation officer or pretrial services agency to pay a pretrial services fee to defray the cost of supervision by the probation department or pretrial services agency if the person has the financial ability to pay the fee and the court finds by clear and convincing evidence that supervision by the probation department or pretrial services agency is necessary to ensure: (1) the defendant's appearance in court; or (2) the physical safety of another person or the community. Prohibits the bureau of motor vehicles from issuing or reinstating the license of a person who has not paid the person's pretrial services fee. Makes other changes relating to the collection and distribution of the fee. (The introduced version of this bill was prepared by the sentencing policy study committee.)

Effective: July 1, 2006.

Ayres, Ulmer, Foley, Cheney

January 4, 2006, read first time and referred to Committee on Courts and Criminal Code.
January 17, 2006, reported — Do Pass.

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HB 1016—LS 6150/DI 106+



January 18, 2006

Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

HOUSE BILL No. 1016

A BILL FOR AN ACT to amend the Indiana Code concerning courts and court officers.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 35-33-8-3.2, AS AMENDED BY P.L.10-2005,
2 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2006]: Sec. 3.2. (a) A court may admit a defendant to bail and
4 impose any of the following conditions to assure the defendant's
5 appearance at any stage of the legal proceedings, or, upon a showing
6 of clear and convincing evidence that the defendant poses a risk of
7 physical danger to another person or the community, to assure the
8 public's physical safety:

9 (1) Require the defendant to:

10 (A) execute a bail bond with sufficient solvent sureties;

11 (B) deposit cash or securities in an amount equal to the bail;

12 (C) execute a bond secured by real estate in the county, where
13 thirty-three hundredths (0.33) of the true tax value less
14 encumbrances is at least equal to the amount of the bail; or

15 (D) post a real estate bond.

16 The defendant must also pay the fee required by subsection (d).

17 (2) Require the defendant to execute a bail bond by depositing

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1 cash or securities with the clerk of the court in an amount not less
 2 than ten percent (10%) of the bail. If the defendant is convicted,
 3 the court may retain all or a part of the cash or securities to pay
 4 fines, costs, fees, and restitution, if ordered by the court. A portion
 5 of the deposit, not to exceed ten percent (10%) of the monetary
 6 value of the deposit or fifty dollars (\$50), whichever is the lesser
 7 amount, may be retained as an administrative fee. The clerk shall
 8 also retain from the deposit under this subdivision the following:

9 (A) Fines, costs, fees, and restitution as ordered by the court.

10 (B) Publicly paid costs of representation that shall be disposed
 11 of in accordance with subsection (b).

12 (C) In the event of the posting of a real estate bond, the bond
 13 shall be used only to insure the presence of the defendant at
 14 any stage of the legal proceedings, but shall not be foreclosed
 15 for the payment of fines, costs, fees, or restitution.

16 (D) The fee required by subsection (d).

17 The individual posting bail for the defendant or the defendant
 18 admitted to bail under this subdivision must be notified by the
 19 sheriff, court, or clerk that the defendant's deposit may be
 20 forfeited under section 7 of this chapter or retained under
 21 subsection (b).

22 (3) Impose reasonable restrictions on the activities, movements,
 23 associations, and residence of the defendant during the period of
 24 release.

25 (4) Require the defendant to refrain from any direct or indirect
 26 contact with an individual.

27 (5) Place the defendant under the reasonable supervision of a
 28 probation officer, **pretrial services agency**, or other appropriate
 29 public official. **If the court places the defendant under the**
 30 **supervision of a probation officer or pretrial services agency,**
 31 **the court shall determine whether the defendant must pay the**
 32 **pretrial services fee under section 3.3 of this chapter.**

33 (6) Release the defendant into the care of a qualified person or
 34 organization responsible for supervising the defendant and
 35 assisting the defendant in appearing in court. The supervisor shall
 36 maintain reasonable contact with the defendant in order to assist
 37 the defendant in making arrangements to appear in court and,
 38 where appropriate, shall accompany the defendant to court. The
 39 supervisor need not be financially responsible for the defendant.

40 (7) Release the defendant on personal recognizance unless:

41 (A) the state presents evidence relevant to a risk by the
 42 defendant:

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(i) of nonappearance; or

(ii) to the physical safety of the public; and

(B) the court finds by a preponderance of the evidence that the risk exists.

(8) Impose any other reasonable restrictions designed to assure the defendant's presence in court or the physical safety of another person or the community.

(b) Within thirty (30) days after disposition of the charges against the defendant, the court that admitted the defendant to bail shall order the clerk to remit the amount of the deposit remaining under subsection (a)(2) to the defendant. The portion of the deposit that is not remitted to the defendant shall be deposited by the clerk in the supplemental public defender services fund established under IC 33-40-3.

(c) For purposes of subsection (b), "disposition" occurs when the indictment or information is dismissed or the defendant is acquitted or convicted of the charges.

(d) Except as provided in subsection (e), the clerk of the court shall:

(1) collect a fee of five dollars (\$5) from each bond or deposit required under subsection (a)(1); and

(2) retain a fee of five dollars (\$5) from each deposit under subsection (a)(2).

The clerk of the court shall semiannually remit the fees collected under this subsection to the board of trustees of the public employees' retirement fund for deposit in ~~the~~ the special death benefit fund. The fee required by subdivision (2) is in addition to the administrative fee retained under subsection (a)(2).

(e) With the approval of the clerk of the court, the county sheriff may collect the bail posted under this section. The county sheriff shall remit the bail to the clerk of the court by the following business day and remit monthly the five dollar (\$5) special death benefit fee to the county auditor.

(f) When a court imposes a condition of bail described in subsection (a)(4):

(1) the clerk of the court shall comply with IC 5-2-9; and

(2) the prosecuting attorney shall file a confidential form prescribed or approved by the division of state court administration with the clerk.

SECTION 2. IC 35-33-8-3.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 3.3. (a) If a defendant is charged with an offense and is placed under the supervision of a probation officer or pretrial services agency, the court may order the defendant to pay the**

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pretrial services fee prescribed under subsection (d) if:

- (1) the defendant has the financial ability to pay the fee; and
- (2) the court finds by clear and convincing evidence that supervision by a probation officer or pretrial services agency is necessary to ensure the:

- (A) defendant's appearance in court; or

- (B) physical safety of the community or of another person.

(b) If a clerk of a court collects a pretrial services fee, the clerk may retain not more than three percent (3%) of the fee to defray the administrative costs of collecting the fee. The clerk shall deposit amounts retained under this subsection in the clerk's record perpetuation fund established under IC 33-37-5-2.

(c) If a clerk of a court collects a pretrial services fee from a defendant and the defendant is:

- (1) charged in a city or town court, upon request of the city or town fiscal officer, the clerk shall transfer not more than three percent (3%) of the fee to the city or town general fund; or

- (2) not charged in a city or town court, upon request of the county auditor, the clerk shall transfer not more than three percent (3%) of the fee to the county auditor for deposit in the county general fund.

(d) The court may order a defendant who is supervised by a probation officer or pretrial services agency and charged with an offense to pay:

- (1) an initial pretrial services fee of at least twenty-five dollars (\$25) and not more than one hundred dollars (\$100);
- (2) a monthly pretrial services fee of at least fifteen dollars (\$15) and not more than thirty dollars (\$30) for each month the defendant remains on bail and under the supervision of a probation officer or pretrial services agency; and
- (3) an administrative fee of one hundred dollars (\$100);

to the probation department, pretrial services agency, or clerk of the court if the defendant meets the conditions set forth in subsection (a).

(e) Except as provided in subsection (f), this subsection does not apply to a defendant charged in a city or town court. The probation department, pretrial services agency, or clerk of the court shall collect the administrative fee under subsection (d)(3) before collecting any other fee under subsection (d). All money collected by the probation department, pretrial services agency, or clerk of the court under this section shall be transferred to the

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1 county treasurer, who shall deposit the money into the county
 2 supplemental adult probation services fund. The fiscal body of the
 3 county shall appropriate money from the county supplemental
 4 adult probation services fund:

5 (1) to the county, superior, or circuit court of the county that
 6 provides probation services or pretrial services to adults to
 7 supplement adult probation services or pretrial services; and

8 (2) to supplement the salary of:

9 (A) an employee of a pretrial services agency; or

10 (B) a probation officer in accordance with the schedule
 11 adopted by the county fiscal body under IC 36-2-16.5.

12 (f) This subsection applies to a defendant charged in a city or
 13 town court. The probation department, pretrial services agency, or
 14 clerk of the court shall collect the administrative fee under
 15 subsection (d)(3) before collecting any other fee under subsection
 16 (d). All money collected by the probation department, pretrial
 17 services agency, or clerk of the court under this section shall be
 18 transferred to the fiscal officer of the city or town for deposit into
 19 the local supplemental adult probation services fund. The fiscal
 20 body of the city or town shall appropriate money from the local
 21 supplemental adult probation services fund to the city or town
 22 court for the court's use in providing supplementary probation
 23 services or pretrial services to adults and to supplement the salary
 24 of a probation officer or an employee of a pretrial services agency.
 25 Money may be appropriated under this subsection only to a city or
 26 town court that has an adult probation services program or a
 27 pretrial services program. If a city or town court does not have an
 28 adult probation services program or a pretrial services program,
 29 the money collected by the probation department or pretrial
 30 services program must be transferred and appropriated as
 31 provided under subsection (e).

32 (g) The county or local supplemental adult probation services
 33 fund may be used only to supplement adult probation services or
 34 pretrial services and to supplement salaries for probation officers
 35 or employees of a pretrial services agency. A supplemental
 36 probation services fund may not be used to replace other probation
 37 services or pretrial services funding. Any money remaining in the
 38 fund at the end of a fiscal year does not revert to any other fund
 39 but continues in the county or local supplemental adult probation
 40 services fund.

41 (h) A defendant who is charged with more than one (1) offense
 42 and who is supervised by the probation department or pretrial

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services agency as a condition of bail may not be required to pay more than:

- (1) one (1) initial pretrial services fee; and
- (2) one (1) monthly pretrial services fee per month.

(i) A probation department or pretrial services agency may petition a court to:

- (1) impose a pretrial services fee on a defendant; or
- (2) increase a defendant's pretrial services fee;

if the financial ability of the defendant to pay a pretrial services fee changes while the defendant is on bail and supervised by a probation officer or pretrial services agency.

(j) An order to pay a pretrial services fee under this section:

(1) is a judgment lien that:

- (A) attaches to the property of the defendant;
- (B) may be perfected;
- (C) may be enforced to satisfy any payment that is delinquent under this section; and
- (D) expires;

in the same manner as a judgment lien created in a civil proceeding;

(2) is not discharged by the disposition of charges against the defendant or by the completion of a sentence, if any, imposed on the defendant; and

(3) is not discharged by the liquidation of a defendant's estate by a receiver under IC 32-30-5.

(k) If a court orders a defendant to pay a pretrial services fee, the court may enforce the order by garnishing the wages, salary, and other income earned by the defendant.

(l) If a defendant is delinquent in paying the defendant's pretrial services fee and has never been issued a driver's license or permit, the court may order the bureau of motor vehicles to not issue a driver's license or permit to the defendant until the defendant has paid the defendant's delinquent pretrial services fee. If a defendant is delinquent in paying the defendant's pretrial services fee and the defendant's driver's license or permit has been suspended or revoked, the court may order the bureau of motor vehicles to not reinstate the defendant's driver's license or permit until the defendant has paid the defendant's delinquent pretrial services fee.

(m) In addition to other methods of payment allowed by law, a probation department or pretrial services agency may accept payment of a pretrial services fee by credit card (as defined in IC 14-11-1-7(a)). The liability for payment is not discharged until

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1 the probation department or pretrial services agency receives
2 payment or credit from the institution responsible for making the
3 payment or credit.

4 (n) The probation department or pretrial services agency may
5 contract with a bank or credit card vendor for acceptance of a
6 bank or credit card. However, if there is a vendor transaction
7 charge or discount fee, whether billed to the probation department
8 or pretrial services agency, or charged directly to the account of
9 the probation department or pretrial services agency, the
10 probation department or pretrial services agency may collect a
11 credit card service fee from the person using the bank or credit
12 card. The fee collected under this subsection is a permitted
13 additional charge to the fee or fees the defendant may be required
14 to pay under subsection (d).

15 (o) The probation department or pretrial services agency shall
16 forward a credit card service fee collected under subsection (n) to
17 the county treasurer or city or town fiscal officer in accordance
18 with subsection (e) or (f). These funds may be used without
19 appropriation to pay the transaction charge or discount fee
20 charged by the bank or credit card vendor.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1016, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

ULMER, Chair

Committee Vote: yeas 9, nays 0.

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